

IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 22.11.2019
PRONOUNCED ON : 12.12.2019
CORAM
THE HONOURABLE MR. JUSTICE T.RAVINDRAN
A.S.No.16 of 2014
and
M.P.No.1 of 2014

Kannammal

...Appellant/Defendant

Vs.

1. Jeyachandra
2. Justin Harris

....Respondents/Plaintiffs

Prayer: First Appeal filed under Section 96 of Civil Procedure Code, against the judgment and decree dated 29.11.2012 made in O.S.No.782 of 2009 on the file of the IV Additional District and Sessions Court, Coimbatore.

For Appellant : Mr. R. Babu
For Respondents: Mr. D. Vijayakumar

JUDGMENT

Aggrieved over the judgment and decree dated 29.11.2012 passed in O.S.No.782 of 2009 on the file of the IV Additional District and Sessions Court, Coimbatore, the defendant has preferred the first appeal.

2. For the sake of convenience, the parties are referred to as per their rankings in the trial court.

3. Suit for recovery of the advance amount with interest.

4. The case of the plaintiffs, in brief, is that they and the defendant entered into an agreement of sale on 26.12.2006 with reference to the suit property fixing the sale price at Rs.75,000/- per cent and on the date of the sale agreement, the defendant received a sum of Rs.5,00,000/- as advance and the period had been fixed as six months in the sale agreement. However, time is not the essence of the contract. At the time of entering into the sale agreement, the defendant agreed to release the suit property from the Land Acquisition proceedings before executing the sale deed in favour of the plaintiffs and further on 31.07.2007, the defendant received a sum of Rs.10,00,000/- from the plaintiffs towards the sale price and

extended the period of sale agreement from 26.06.2007 to 26.06.2008 for the purpose of releasing the suit property from the Land Acquisition proceedings and the defendant had acknowledged the receipt of Rs.10,00,000/- by the endorsement made on the sale agreement. The plaintiffs had been always ready and willing to pay the balance sum and obtain the sale deed. Further at the request of the defendant, they had also filed a Writ Petition in the name of the defendant in the High Court of Madras in W.P. No.36963 of 2007 and also preferred Writ Appeal No.991 of 2008 and it is only the plaintiffs who had met the expenses for the abovesaid proceedings in the High Court as well the proceedings in the Supreme Court. However, the abovesaid proceedings ended in failure and the appeal had also been dismissed by the Supreme Court and therefore, the defendant having no right or semblance to the suit property and as he cannot sell the suit property to the plaintiffs, according to the plaintiffs, they demanded the defendant to repay the advance amount of Rs.15,00,000/- with interest. However, the defendant had been evading the same and left with no other alternative, the plaintiffs issued a legal notice on 02.10.2009 claiming the refund of the advance amount with interest and the defendant sent a reply notice containing false allegations and hence the suit.

5. The defendant resisted the plaintiffs' suit admitting the execution of the sale agreement in favour of the plaintiffs on 26.12.2006 as put forth by the plaintiffs and also admitted the receipt of Rs.5,00,000/- as advance on the date of the sale agreement and the period of six months fixed in the sale agreement for the completion of the sale transaction, however, disputed the case of the plaintiffs that she had received Rs.10,00,000/- from the plaintiffs on 31.07.2007 and made an endorsement in the sale agreement as claimed by the plaintiffs and also disputed that the plaintiff had taken the proceedings in the High Court and the Supreme Court challenging the Land Acquisition proceedings qua the suit property on behalf of the defendant and spending the expenses towards the same. On the other hand, according to the defendant, inasmuch as the plaintiffs had not taken appropriate steps with reference to the Land Acquisition proceedings initiated against the suit property before the court within the stipulated period, the defendant had incurred the loss due to the same and at that point of time, the plaintiffs had insisted that the defendant should acknowledge the expenses incurred by the plaintiffs for the initiation of the proceedings in the High Court challenging the Land Acquisition proceedings and accordingly obtained the LTI and signature of the defendant in the sale agreement and assured that they would only fill the expenses incurred by the

plaintiffs to be paid by the defendant for the proceedings initiated in the court and on the other hand created the endorsement as if they had paid Rs.10,00,000/- towards the sale consideration to the defendant under the sale agreement and however, on account of the failure of the plaintiffs to discharge the suit property from the Land Acquisition proceedings, the defendant has sustained loss and furthermore, the defendant is unable to obtain proper compensation from the concerned authorities and therefore, according to the defendant, she has not received Rs.10,00,000/- from the plaintiffs towards the sale consideration on 31.07.2007 as claimed by the plaintiffs and not put her signature and LTI in the endorsement made in the sale agreement qua the same and according to the defendant, the abovesaid endorsement had been created by the plaintiffs and therefore, the suit is liable to be dismissed.

6. On the basis of the abovesaid pleas put forth by the respective parties, the following issues were framed by the trial court for consideration.

1. Whether the plaintiffs are entitled for advance amount as prayed for in the suit?
2. Whether the sale agreement is genuine and valid or not?
3. To what other relief?

7. In support of the plaintiffs' case, P.Ws.1 and 2 were examined and Exs.A1 to A6 were marked. On the side of the defendant, D.W. 1 was examined and no document has been marked.

8. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial court was pleased to determine that the defendant is liable to pay the advance amount of Rs.15,00,000/- to the plaintiffs with interest at the rate of 12% from the date of decree till the date of realisation and accordingly disposed of the plaintiffs' suit with costs. Impugning the same, the first appeal has been preferred by the defendant.

9. The following points arise for determination in the first appeal.

1. Whether the plaintiffs are entitled to claim the suit amount from the defendant as prayed for?
2. To what relief the plaintiffs are entitled to?
3. To what relief the defendant / appellant is entitled to?

Point No. 1

10. There is no dispute between the parties that the suit sale agreement Ex.A1 dated 26.12.2006 had been entered into between them qua the sale of the suit property. It is also not

in dispute between the parties that a sum of Rs.5,00,000/- had been received from the plaintiffs as advance on the date of the Ex.A1 sale agreement. According to the plaintiffs, on 31.07.2007, they had paid a sum of Rs.10,00,000/- to the defendant towards the sale consideration and thereby the period had been extended by the defendant for the purpose of releasing the suit property from the Land Acquisition proceedings. From the materials placed on record, it is found that the suit property was subjected to the Land Acquisition proceedings and it is found that the proceedings had been initiated in the High Court on behalf of the defendant by the plaintiffs to discharge the suit property from the Land Acquisition proceedings. According to the plaintiffs, the defendant had made an endorsement in the sale agreement for the receipt of Rs.10,00,000/- on 31.07.2007 by affixing her signature and LTI in the endorsement. In this connection, to sustain their case, the plaintiffs have examined P.W.1 and one of the attestors to the endorsement as P.W.2. P.W.2 has deposed that the endorsement dated 31.07.2007 has been made by the defendant after receiving Rs.10,00,000/- from the plaintiffs in his presence and it is also his evidence that the abovesaid endorsement had been attested by him as well as the son of the defendant. Therefore, from the abovesaid evidence of P.W.2, it is found that the plaintiffs have established that only on the receipt of Rs.10,00,000/-, the defendant had chosen to affix her LIT in the endorsement in the presence of her son as well as in the presence of P.W.2. The defendant had not chosen to enter into the witness box and repudiate the claim of the plaintiffs. On the other hand, her son had tendered evidence as D.W.1. It is found that D.W.1 would admit the LTI of his mother in the endorsement dated 31.07.2007 as well as his signature. However, according to D.W.1, the plaintiff had assured that they would only incorporate the expenses borne by them as regards the proceedings initiated in the High Court for challenging the Land Acquisition proceedings and on the other hand, they had created the endorsement as if they had paid Rs.10,00,000/- towards the sale price. Therefore, according to D.W.1, no amount had been paid by way of the endorsement dated 31.07.2007.

11. From the materials placed on record, it is seen that as the suit property was subjected to Land Acquisition proceedings, the proceedings had been initiated in the High Court challenging the same. From the evidence of D.W.1, it is found that the plaintiffs had undertaken to initiate the legal proceedings with reference to the same, they being the agreement holder and accordingly the plaintiffs had initiated the proceedings before the High Court and subsequently in the Apex Court. However, there is no clear material either on the

part of the plaintiffs or on the part of the defendant as to who has to bear the expenses with reference to the proceedings initiated in the High Court and the Apex Court. In this connection, D.W.1, during the course of evidence, has admitted that at the time of affixing his signature and his mother's signature in the endorsement, the same had not been filled up. However, he would state that he had put his signature with the date 31.07.2007 and according to him, there is no specific reason for putting the abovesaid date below his signature and when he had been questioned as to why he had put up the signature in the blank paper, according to D.W.1, the plaintiffs had assured that they would fill up the space with reference to the expenses spent for the proceedings initiated in the High Court and the plaintiffs had represented that a sum of Rs.10,00,000/- would be required for the proceedings initiated in the High Court. Therefore, as rightly determined by the trial court, it is found that the proceedings had been initiated in the High Court and the Supreme Court, challenging the Land Acquisition only by the plaintiffs on behalf of the defendant. However, as rightly determined by the trial court, no prudent person would endeavour to make an endorsement for seeking the expenses incurred with reference to the legal proceedings initiated in the High Court as put forth by the defendant's son. On the other hand, considering the evidence of P.W.2, another attester, when P.W.2 has clearly spoken about the endorsement having been made by the defendant only in acknowledgment of the receipt of Rs.10,00,000/- and the defendant having made the endorsement in the presence of her son D.W.1 and D.W.1 having also admitted his mother's acknowledgment as well his attestation and when nothing has been attributed against P.W.2 for deposing against the defendant and when it is further noted that D.W.1 is working in the Transport Corporation and being a man of knowledge and in such view of the matter, his claim that he and his mother put the signatures in the blank paper on the assurance of the plaintiffs that they would fill up the same only towards the legal expenses to be incurred by them for the discharge of the suit property from the Land Acquisition proceedings, as such, cannot be believed and accepted in any manner. When to the knowledge of D.W.1, the court expenses would amount to Rs.10,00,000/- as claimed to have been spent by the plaintiffs, as held by the trial court, no prudent person would have endeavoured to affix his signature and also would allow his mother to affix her LTI in the blank paper without knowing the contents of the same. Therefore, considering the materials on record, in toto, when it is found that the evidence of D.W.1 does not inspire confidence and acceptability and on the other hand when from the evidence of P.Ws.1 and 2, in toto, it is found that the defendant had acknowledged the receipt of

Rs.10,00,000/- from the plaintiffs on 31.07.2007 and accordingly made the endorsement with reference to the same in the sale agreement, resultantly, it is found that inasmuch as the sale agreement could not be proceeded further and as the plaintiffs had paid a sum of Rs.15,00,000/- towards the sale consideration, it is found that as held by the trial court, the plaintiffs are entitled to obtain the refund of the abovesaid amount with interest as determined by the trial court.

12. In the light of the abovesaid reasonings, I hold that the plaintiffs are entitled to claim the refund of the advance amount with interest as determined by the trial court. Accordingly, the point number 1 is answered.

Point Numbers 2 and 3

13. For the reasons aforestated, the judgment and decree dated 29.11.2012 passed in O.S.No.782 of 2009 on the file of the IV Additional District and Sessions Court, Coimbatore, are confirmed and resultantly, the first appeal is dismissed with costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

bga

Copy to

1. IV Additional District and Sessions Court, Coimbatore.
2. The Section officer, V.R. Section, High Court, Madras

+1 cc to M/s.B.Vijayakumar Advocate sr103969
+1 cc to Mr.D.Vijayakumar Advocate sr103505

A.S.No.16 of 2014

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